

AMENDED IN SENATE JUNE 21, 2012

AMENDED IN SENATE APRIL 24, 2012

AMENDED IN SENATE AUGUST 15, 2011

AMENDED IN ASSEMBLY APRIL 7, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 1393

Introduced by Assembly Member Perea

February 28, 2011

An act to ~~amend Section 4007 of~~ *to add Section 4007.5 to* the Penal Code, relating to county jails.

LEGISLATIVE COUNSEL'S DIGEST

AB 1393, as amended, Perea. *Fresno* County jails: overcrowding: transfer to contiguous counties.

Existing law authorizes a superior court judge to designate the jail of a contiguous county for the confinement of a prisoner of his or her county when there is no jail in the county or when a county jail becomes unfit or unsafe for the confinement of prisoners.

This bill would authorize ~~a superior court judge to designate the jail of a contiguous county for the confinement of a prisoner of his or her county when a jail is required to release prisoners due to overcrowding as a result of a federal consent decree or other legal mandate~~ *a local law enforcement agency within the County of Fresno to transfer (1) prior to booking, a person who is under arrest and in the custody of that agency, or (2) upon a person's scheduled release from the Fresno County Jail due to overcrowding, he or she has been identified by the arresting agency as being at a high risk to reoffend, and he or she is*

the subject of a formal request from the arresting agency for notification prior to release. The bill would require, prior to any transfer, the governing bodies of the local law enforcement agency seeking the transfer and the receiving jail facility to enter into a written agreement governing the terms of the booking, housing, and transportation of transferees. The bill would provide that the County of Fresno, including its officers and employees, shall not be responsible for any costs, claims, or liability of any kind associated with or resulting from carrying out these provisions at the time of transfer, unless the Fresno County Sheriff's Office is the transferring agency and that all costs, claims, and liability would be the responsibility of the transferring.

This bill would make legislative findings and declarations as to the necessity of a special statute for the County of Fresno.

~~The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~yes~~-no.
State-mandated local program: ~~yes~~-no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 4007.5 is added to the Penal Code, to
- 2 read:
- 3 4007.5. (a) A local law enforcement agency in the County of
- 4 Fresno, after consultation with the sheriff or the Fresno County
- 5 Sheriff's Office, may transfer to the jail facility of a contiguous
- 6 county a person who comes within either of the following
- 7 descriptions:
- 8 (1) Prior to booking, the person is under arrest and in the
- 9 custody of that local law enforcement agency.
- 10 (2) Upon a person's scheduled release from the Fresno County
- 11 Jail due to overcrowding, he or she has been identified by the
- 12 arresting agency as being at a high risk to reoffend, and he or she
- 13 is the subject of a formal request from the arresting agency for
- 14 notification prior to release.

(b) Prior to any transfer described in subdivision (a), the governing bodies of the local law enforcement agency seeking the transfer and the receiving jail facility shall enter into a written agreement governing the terms of the booking, housing, and transportation of transferees, including the maximum number of transferees that will be accepted at any given time and any conditions that would limit this number. Notwithstanding any other law, unless the Fresno County Sheriff's Office is the transferring agency, the County of Fresno, including its officers and employees, shall not be responsible for any costs, claims, or liability of any kind associated with or resulting from carrying out the provisions of this section at the time of transfer, including, but not limited to, transportation, housing, food, clothing, dental, medical, or mental health care for the person arrested. All costs, claims, and liability shall be the responsibility of the local law enforcement agency that transfers the person.

(c) Nothing in this section applies to or affects the law governing criminal justice realignment as enacted by Chapter 15 of the Statutes of 2011, and subsequent amendments thereto.

SEC. 2. The Legislature finds and declares that a special law is necessary and that a general law cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution because of the unique safety issues relating to the release of prisoners prior to sentencing in the County of Fresno.

SECTION 1. ~~Section 4007 of the Penal Code is amended to read:~~

~~4007. (a) When there is no jail in the county, when the jail becomes unfit or unsafe for the confinement of prisoners, or when a jail is required to release prisoners due to overcrowding as a result of a federal consent decree or other legal mandate, the judge of the superior court may, by a written order filed with the clerk of the court, designate the jail of a contiguous county for the confinement of any prisoner of his or her county, and may at any time modify or vacate the order.~~

~~(b) When there are reasonable grounds to believe that a prisoner may be forcibly removed from a county jail, the sheriff may remove the prisoner to any California state prison for safekeeping and it is the duty of the warden of the prison to accept and detain the prisoner in his or her custody until his or her removal is ordered by the superior court of the county from which he or she was~~

1 delivered. Immediately upon receiving the prisoner the warden
2 shall advise the Secretary of the Department of Corrections and
3 Rehabilitation of that fact in writing.

4 (e) When a county prisoner requires medical treatment
5 necessitating hospitalization which cannot be provided at the
6 county jail or county hospital because of lack of adequate detention
7 facilities, and when the prisoner also presents a serious custodial
8 problem because of his or her past or present behavior, the judge
9 of the superior court may, on the request of the county sheriff and
10 with the consent of the Secretary of the Department of Corrections
11 and Rehabilitation, designate by written order the nearest state
12 prison or correctional facility which would be able to provide the
13 necessary medical treatment and secure confinement of the
14 prisoner. The written order of the judge shall be filed with the clerk
15 of the court. The court shall immediately calendar the matter for
16 a hearing to determine whether the order shall continue or be
17 rescinded. The hearing shall be held within 48 hours of the initial
18 order or the next judicial day, whichever occurs later. The prisoner
19 shall not be transferred to the state prison or correctional facility
20 prior to the hearing, except upon a determination by the physician
21 responsible for the prisoner's health care that a medical emergency
22 exists which requires the transfer of the prisoner to the state prison
23 or correctional facility prior to the hearing. The prisoner shall be
24 entitled to be present at the hearing and to be represented by
25 counsel. The prisoner may waive his or her right to this hearing
26 in writing at any time. If the prisoner waives his or her right to the
27 hearing, the county sheriff shall notify the prisoner's attorney of
28 the transfer within 48 hours, or the next business day, whichever
29 is later. The court may modify or vacate the order at any time.

30 (d) The rate of compensation for the prisoner's medical
31 treatment and confinement within a California state prison or
32 correctional facility shall be established by the Department of
33 Corrections and Rehabilitation, and shall be charged against the
34 county making the request.

35 (e) When there are reasonable grounds to believe that there is
36 a prisoner in a county jail who is likely to be a threat to other
37 persons in the facility or who is likely to cause substantial damage
38 to the facility, the judge of the superior court may, on the request
39 of the county sheriff and with the consent of the Secretary of the
40 Department of Corrections and Rehabilitation, designate by written

1 order the nearest state prison or correctional facility which would
2 be able to secure confinement of the prisoner, subject to space
3 available. The written order of the judge must be filed with the
4 clerk of the court. The court shall immediately calendar the matter
5 for a hearing to determine whether the order shall continue or be
6 rescinded. The hearing shall be held within 48 hours of the initial
7 order or the next judicial day, whichever occurs later. The prisoner
8 shall be entitled to be present at the hearing and to be represented
9 by counsel. The court may modify or vacate that order at any time.
10 The rate of compensation for the prisoner's confinement within a
11 California state prison or correctional facility shall be established
12 by the Department of Corrections and Rehabilitation and shall be
13 charged against the county making the request.

14 SEC. 2. If the Commission on State Mandates determines that
15 this act contains costs mandated by the state, reimbursement to
16 local agencies and school districts for those costs shall be made
17 pursuant to Part 7 (commencing with Section 17500) of Division
18 4 of Title 2 of the Government Code.